

ten months after I had given my decision on that application, but before the hearing of further argument.

Again, Mr. Anantham referred me to *United Asian Bank Berhad v. Bhassie* [1991] 2 MLJ 122.

I agree with the views expressed by the learned Judge that the admission of fresh evidence or new affidavit at the further argument stage is discretionary, and the circumstances in which fresh evidence can be admitted on appeal, i.e. where the evidence could not be obtained with reasonable diligence for use at the trial, where the evidence, if given, would probably have an important influence on the result of the case, and where the evidence must be such as is presumably to be believed, are applicable in admitting fresh evidence at further argument stage.

Learned Counsel for the defendant in an attempt to bring his case within one of the exceptions enumerated in the judgment of that case, said that the evidence could not have been obtained earlier. When asked by the Court to show which one, he could not.

In the circumstances I allowed Mr. Anantham's preliminary objection.

- GURDIAL SINGH NIJAR**
v.
K S BALAKRISHNAN
 MAHKAMAH TINGGI, JOHOR BAHRU
 DATO' HJ. MOHD. NOOR BIN
 HJ. AHMAD J.
 [PETISYEN PILIHANRAYA NO. 1
 TAHUN 1990]
 23 DECEMBER 1992
- ELECTION PETITION: Corrupt practice - Quasi criminal nature - Onus on petitioner - Proof beyond reasonable doubt - Principal and agent - Whether candidate is culpable for actions and words uttered by head of political party's election machinery.***
- The Petitioner filed a petition to declare the election of the Johor State constituency of Pasir Gudang held on 21 October 1990 invalid on the sole ground that a corrupt practice under s. 32(c) of the Election Offences Act 1954 was alleged to have been committed by the respondent or his agent with his consent and/or knowledge in that on 20 October 1990 at or about 8.40 p.m. until the early hours of the election day, land titles were given to voters in the said constituency at FELDA Cahaya Baru in pursuance to a promise made earlier that day.
- Pursuant to a dialogue session held between PW4, the head of the Barisan National election machinery in Tebrau constituency, and Felda settlers, PW4 delivered 191 land titles to the settlers on the evening of 20 October 1990. The respondent was present on both these occasions.
- Held:**
- g** [1] An allegation of corrupt practice is of a quasi - criminal nature in as much as a finding of corrupt practice entails penal consequences. The onus is on the petitioner to prove corrupt practice beyond reasonable doubt by evidence which is clear, unequivocal and unambiguous.
 - h** [2] A corrupt motive must in all cases be strictly proved. For this purpose a corrupt motive in the mind of the person bribed alone is not enough, the question is as to the intention of the person who bribes him.
 - i** [3] PW4 could be regarded the agent of the respondent for the purpose of the said

election. In the light of the facts and the fact that nothing about the election was mentioned at the dialogue PW4 merely confined himself to the task he was officially assigned to do.

[4] What PW4 did does not amount to corrupt practice because he merely expedited the process of the settlers getting their land titles for which all dues to the Government and FELDA had been fully settled. His deed in this respect even done on the eve of election can be said to fall within the legitimate scope of the Government.

[Petition dismissed with costs].

Cases referred to:

Ali Amberan v. Tunku Abdullah [1990] 2 MLJ 15 (foll)

Ghasi Ram v. Dal Singh & Ors. [1968] AIR SC 1191 (foll)

B. Rajagopala Rao v. Appayya Dora Hanumanthu [1990] AIR SC 1889 (foll)

Litchfield [1869] 1 O'M & H 22 (cit)

Wallingford [1869] 1 O'M & H 57 (cit)

Westminster Borough [1869] O'M & H 89 (cit)

Pengkalan Kota Bye Election Teoh Teik Huat v. Lim

Kean Siew & Anor. [1981] 1 MLJ 265 (foll)

Amirchand v. Surendra Lal Jha [1954-55] 10 LR 57 (foll)

S. Makan Singh v. Umrao Singh [1961] AIR Punj. 244 (foll)

Legislation referred to:

Election Offences Act 1954, ss. 10, 11(1)(b), 32(c), 36, 37

For the petitioner - Mohideen Abd. Kadir, Gurdial Singh Nijar & R.A. Kumar; T/n. Nijar & Nijar

For the respondent - D.P. Vijandran; T/n. D.P. Vijandran & Associates

JUDGMENT

Hj. Mohd. Noor. bin Hj. Ahmad J:

By this Petition, the petitioner, the unsuccessful candidate seeks to avoid the election of the respondent who was returned as duly elected in the election for the Johor State constituency of Pasir Gudang on 21 October 1990. The sole ground of the Petition is that a corrupt practice under s. 32(c) of the Election Offences Act 1954 was alleged to have been committed by the respondent or his agents with his consent and/or knowledge in that on 20 October 1990 at or about 8.40 p.m. until the early hours of the election day, land titles were given to voters in the said constituency at Felda Cahaya Baru in pursuance of a promise made earlier that day.

- a Section 11 of the Act defines and prescribes the punishment for a corrupt practice, which by sub-section (1) (b) thereof includes the offence of bribery, and s. 10 provides that the persons specified therein shall be deemed guilty of the offence of bribery in the circumstances enumerated in that section. The material provision applicable to this case appears to be paragraph (a) which reads -

- b every person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

In considering this case, I have not lost sight of the principles pertaining to elections echoed by Judges previously, notably -

- c it is of significance to note that the primary purpose of the diverse provisions of the election laws which may at first-hand appear to be technical is to safeguard the purity of the election process and the courts will not in ordinary circumstances minimize their operation. It is the concern of the courts to purge elections of all kinds of corrupt or illegal practices so as to protect the political rights of the citizens and the constituency. [per Raja Azlan Shah J. (as he then was) in *Ali Amberan v. Tunku Abdullah* [1990] 2 MLJ 15].

- d Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and a corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. [per Hidayatullah J. in *Ghasi Ram v. Dal Singh & Ors.* AIR 1968 SC 1191].

- e It is well settled that an allegation of corrupt practice is of a quasi-criminal nature in as much as a finding of corrupt practice entails penal consequences. The onus is on the petitioner to prove corrupt practice viz. bribery beyond

reasonable doubt by evidence which is clear, unequivocal and unambiguous.

The facts which are undisputed reveal that:

- (1) The withholding of the delivery of land titles to 191 settlers by Felda had been a hot issue at Felda Cahaya Baru for quite some time at the latest since 1987. It was sparked off by Felda's refusal to hand over the titles to the settlers unless the settlers signed a supplementary agreement with Felda making Felda the management agent for the settlers, in conformity with its national policy. Despite the State Executive Council's decision on 15 October 1986 to exempt the Felda Cahaya Baru settlers from signing the said supplementary agreement, 237 settlers in Felda Cahaya Baru had voluntarily signed it and were given the titles some time in 1987. However, the 191 settlers refused to sign the said supplementary agreement. Although discussions were held between the State Government representatives, Felda and the settlers in an attempt to solve the problem the effort came to naught and the problem remained unresolved.
- (2) However, on the morning of 20 October 1990 at a dialogue session convened by the Chairman of the Action Committee of the settlers between PW4, the head of the Barisan Nasional election machinery for the constituency of Tebrau and the settlers at the local UMNO operations room, in the presence of the respondent and another Barisan Nasional candidate contesting the Parliamentary seat of Tebrau, upon demand by the settlers under a tense situation PW4 acceded to the settlers demand. Thereafter, PW4 obtained the titles from the office of the Johore Menteri Besar and then delivered them to the 191 settlers that evening, also in the presence of the respondent.

From the facts, it is manifestly clear that -

- (a) PW4 could be regarded as the agent of the respondent for the purpose of the said election. In *Ali Amberan v. Tunku Abdullah* cited earlier, His Lordship Raja Azlan Shah J. (as he then was) said -

Inspired and guided by English and Indian election law I take the view that the rule of extended scope of agency holds

- a good in our election laws, any other view would tend to make it impossible to preserve the purity and freedom of elections. Accordingly a candidate at an election is responsible for the acts of agents who are not and would not necessarily be agents under the common law of agency. Therefore, a political party and its prominent members who set up the candidate and with his consent, either expressly or by necessary implication, sponsor his cause and work actively to promote his election, may aptly be regarded the "agents" of the candidate for election purposes.
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- c (b) PW4 was not at an election meeting but at the dialogue session with the settlers in his capacity as an Executive Council member officially representing the Menteri Besar of Johor (see exhibit P7).
- d (c) The delivery of the land titles to the 191 settlers without the need to sign the supplementary agreement was done in conformity with the decision of the Executive Council of 15 October 1986 and with the blessing of the Menteri Besar (see exhibit P4, exhibit D11 and exhibit D13 a copy of which was extended to PW4).
- e My view is that, since the respondent was mute at the impugned occasions, the conduct of PW4 and what he uttered on those occasions must be scrutinized in order to determine whether culpability can be attached to the respondent. For this purpose it is necessary to consider whether what PW4 did or uttered on those occasions were confined merely to the performance of his task in solving the problem of the settlers in his representative capacity representing the State Government or whether he had transcended the twilight zone between campaign pledges and promises and electoral misfeasance to the next step beyond thus, transforming himself into an agent of the respondent which may attract culpability.
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- g Such scrutiny reveals that -
- h (a) When asked to explain why titles were still not given to the settlers, he had no ready explanation and inquired about the position by a phone call to the office of Menteri Besar.
- i (b) He informed the settlers of what he was told, that is to say, the titles were in the office of Menteri Besar and anyone could collect them.

- (c) The settlers insisted that he collected the titles on their behalf.
- (d) Under a tense atmosphere and on being accused by the settlers against the Barisan Nasional candidates as "pembongong" he did collect and deliver the titles later that evening.

In the light of these facts and the fact that nothing about the election was mentioned at the dialogue I am satisfied that PW4 merely confined himself to the task he was officially assigned to do. I am also satisfied that the promise made and the delivery of the titles done by him do not amount to a bargain entered into by him for a vote or votes and thus, would not amount to corrupt practice (see *B. Rajagopala Rao v. Appayya Dora Hanumanthu* AIR 1990 SC 1889 @ 1891 paragraph 5). The fact that PW2 said "Jikalau hakmilik tidak diberi pada petang itu saya tidak ada keyakinan kepada calon itu, iaitu calon Barisan Nasional" is irrelevant because a corrupt motive must in all cases be strictly proved. For this purpose a corrupt motive in the mind of one person bribed alone is not enough; the question is as to the intention of the person who bribes him [see *Lichfield Case* [1869] 1 O'M & H 22; *Wallingford Case* [1869] 1 O'M & H 57; *Westminster Borough Case* [1869] 1 O'M & H 89 @ 95].

Even assuming that PW4 at that dialogue session was in the course of promoting the respondent's election, I am of the opinion that what he did does not amount to corrupt practice because he merely expedited the process of the settlers getting their land titles for which all dues to the Governments and Felda had been fully settled. His deed in this respect even done on the eve of election can be said to fall within the legitimate scope of the Government "to pursue promises, propitiate pleas and propel and promote projects and programmes for amelioration and development in the constituency for the benefit and progress of that locality and all its commorants generally ..." [per Abdoolcader J. (as he then was) in *Re Pengkalan Kota Bye-Election Teoh Teik Huat v. Lim Kean Siew & Anor.* [1981] 1 MLJ 265 @ 267]. No doubt what he did had the effect of pushing forward the respondent's cause because good administration changed the settlers' condition and their hearts but that was inevitable. Like Ministers, the position of the Menteri Besar and his

- a Executive Council members is difficult. It is obvious that after the dissolution of the State Legislative Assembly they cannot cease to function when the election is due. They must of necessity attend to the grievances, otherwise they must fail. They must improve the image of their administration before the public. If every one of their official acts done *bona fide* is to be construed against them and an ulterior motive is spelt out of them, the administration must necessarily come to a standstill (see *Ghasi Ram v. Dal Singh* AIR 1968 SC 1191 @ 1196 paragraph 13). In *Amirchand v. Surendra Lal Jha* [1954-55] 10 Ele. LR 57 it was laid down that if a Minister redresses the grievances of a class of the public or people of a locality or renders them any help, on the eve of an election, it is not corrupt practice unless he obtains promises from the voters in return, as a condition for their help. In *S. Mahan Singh v. Umrao Singh* AIR 1961 Punj. 244 the Court held that a candidate making a promise to get the grievances of certain refugees as a body remedied and even getting the Revenue Minister to reinforce his promise was not corrupt practice.
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- e Therefore, I conclude that if the agent, that is to say, PW4 had not committed any corrupt practice it follows that the principal, that is say, the respondent is not culpable.

- f I have considered the facts highlighted by the Petitioner's Counsel in his attempt to prove corrupt motive, in particular, on the fact that, despite the Executive Council's decision of 15 October 1986, 237 settlers had voluntarily signed the supplementary agreement and yet the land titles for the 191 settlers were collected from Felda on the same morning on the pretext of keeping only (see exhibit D 10) but were delivered to the settlers behind Felda's back repugnant to its national policy. To my mind, these facts do not go beyond mere suspicion.
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- h The petition therefore fails and is dismissed with costs. I shall certify accordingly to the Election Commission under the provision of s. 36 of the Act and also report in writing to the Commission as required by s. 37 that no corrupt practice has been proved to have been committed with the knowledge of the respondent as alleged by the petitioner or at all.